

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

Bky File No. 04-31649 GFK

Stephen William Comiskey

Debtor

Robert Sebastian

Adv. No. 04-3287

Plaintiff

v.

ANSWER and COUNTERCLAIM

Stephen William Comiskey

Defendant

Defendant Stephen William Comiskey, for his Answer to Plaintiff's Complaint, states and alleges as follow:

1. That except as admitted or explained, denies each and every allegation contained in Plaintiff's complaint.

2. That Defendant admits the allegations contained in §1, 2, 3, 4 and 6 of Plaintiff's complaint.

3. With regard to the allegations contained in §5, Finish Line Cleaning, Inc. was incorporated on October 17, 1997.

4. With regard to the allegations contained in §7 and §8, Donni Jo Comiskey's ("Donni Jo") duties, per agreement with Plaintiff, initially consisted of that of a receptionists, with Betty Allen being in charge of all accounting and bookkeeping functions. Subsequently, Donni Jo's duties were expanded to include scheduling of appointments and contractors and related marketing activities.

5. With regard to the allegations contained in §11 and 12, all decisions regarding the operation of the business, including creation of a "restoration company" and acquisition of credit lines, was the joint and sole decisions of Plaintiff and Defendant, with full disclosure and discussion between the parties.

6. With regard to the allegations contained in §13, on information and belief, the decision by Plaintiff and Defendant to begin separate operations began in early 2001.

7. With regard to the allegations contained in §14, the Parties divided up the customer base so as to permit each to pursue his own activity, without competing with the other, which agreement Plaintiff subsequently violated.

8. With regard to the allegations contained in §15 and 16, admits that some indebtedness of the company was not paid at time of separation and some was subsequently paid out of personal assets of Defendant. Defendants is without information to admit or deny allegations by Plaintiff that he was required to pay for obligations of Finish Line Cleaning, Inc. and holds Plaintiff strictly accountable to proof of same.

9. With regard to the allegations contained in §18, Plaintiff, was at all times, aware of the delinquent taxes issue, having been involved in a meeting with tax professionals in January of 2002.

10. With regard to the allegations contained in §19, per agreement of and knowledge of the Plaintiff, the compensation of Defendant and Donna Jo was structured to include payment in kind as well as established salary.

11. As and for Affirmative defenses, Defendant states that Plaintiff's cause of action is barred for failure to state a claim on which relief can be granted.

THAT AS AND FOR DEFENDANT'S COUNTERCLAIM, DEFENDANT STATES AND ALLEGES
AS FOLLOWS:

12. That Defendant has and will incur damages in the form of attorney's fees and costs in an amount as yet undetermined to defend this action.

WHEREFORE, Defendant requests the following:

1. Dismissing Plaintiff's alleged cause of action;
2. Awarding to Defendant attorney's fees, costs and disbursements.
3. For such other and further relief as the Court may deem just and equitable.

G. MARTIN JOHNSON, LTD.

Dated: July 29, 2004.

By: /s/ G. Martin Johnson
G. Martin Johnson (#000052279)
3800 West Old Shakopee Road
Bloomington, MN 55431
Tel: (952) 881-9758
Fax: (952) 881-2172

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UNSWORN DECLARATION OF SERVICE

I, G. Martin Johnson, declare under penalty of perjury that on July 29, 2004, I mailed copies of the foregoing Answer to Defendant's Complaint, by first class mail, postage prepaid, to each entity named below at the address stated below for each entity.

David Crosby
c/o Leonard Street and Deinard
150 South Fifth Street
Suite 2300
Minneapolis, MN 55402

US Trustee's Office
1017 US Federal Courthouse
301 US Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Patti Sullivan
Box 16406
St. Paul, MN 55116

Stephen William Comiskey
13104 Longview Drive
Burnsville, MN 55337

Executed on: July 29, 2004

/s/ G. Martin Johnson
G. Martin Johnson

G. MARTIN JOHNSON, LTD.

ATTORNEY AT LAW

3800 WEST OLD SHAKOPEE ROAD

BLOOMINGTON, MINNESOTA 55431

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SUITE 132

BURNSVILLE, MINNESOTA 55337

TELEPHONE: (952) 882-1566

Reply to X

G. Martin Johnson

Paralegal

Laurel A. Correll

Chris A. Snyder

July 29, 2004

David Crosby

c/o Leonard Street and Deinard

150 South Fifth Street

Suite 2300

Minneapolis, MN 55402

Re:

Bky File

Adv. NO.

Our File No.

Robert Sebastian VS. Stephen William Comiskey

04-31649 GFK

04-3287

2071-42024

Dear Mr. Crosby:

Enclosed please find and herewith served upon you by U.S. Mail, Defendant's Answer to Plaintiff's Complaint.

Yours very truly,

/s/ G. Martin Johnson

G. Martin Johnson

GMJ/lc

Enclosures

cc: Stephen Comiskey